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Criminal Law - Constitutionality of Statute Prohibiting Possession of Hypodermic Needle Without Criminal Intent

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men's Act is concurrent with the state compensation act, he need not pursue a costly appeal merely to find out which act applies to him, but can simply choose between the two without fear of having made the wrong choice.⁴⁵

C. Jerre Lloyd

CRIMINAL LAW — CONSTITUTIONALITY OF STATUTE PROHIBITING POSSESSION OF HYPODERMIC NEEDLE WITHOUT CRIMINAL INTENT

Defendant was convicted under a Louisiana statute¹ making it a crime to possess a hypodermic needle. The statute, with certain exceptions,² imposed criminal liability for mere possession with no consideration given to the intended use of the needle. In the original trial³ the state introduced evidence of the presence of a barbiturate in the box where the needle was found. Defendant offered evidence to prove that he had never used the needle for the administration of narcotics. The state's objection of irrelevancy to this offer was sustained in the district court on the grounds that the defendant was being prosecuted for possession alone, and intent was therefore irrelevant. On appeal, the case was remanded by the Supreme Court on the grounds that evidence tending to show an illegal intent and evidence tending toward disproving this intent are both relevant in all criminal prosecutions.⁴ On retrial, the defendant was again convicted, with the evidentiary matter apparently never again becoming an issue. On appeal of the second conviction, the de-

the Longshoremen's Act and the applicable state act. See *Hahn v. Ross Island Sand & Gravel Co.*, 79 S.Ct. 266 (U.S. 1959) (employer subjected to negligence suit resulting from failure to participate in state compensation plan even though employer was covered under the Longshoremen's Act).

45. A comparison of the benefits under the Louisiana Workmen's Compensation Act with those under the Longshoremen's Act can be found in MALONE, LOUISIANA WORKMEN'S COMPENSATION LAW AND PRACTICE 606-12 (1951). For a short discussion of the possibility of obtaining awards under both the Louisiana act and the federal act, see note 39 *supra*.

1. LA. R.S. 40:962(B) (1950): "It is unlawful for any person, except a dealer in surgical instruments, apothecary, dentist, veterinarian or nurse, attendant or intern of a hospital, sanatorium or institution in which persons are treated for disability or disease, at any time to have or possess a hypodermic syringe or needle unless such possession be authorized by the prescription or certificate of a physician issued within the period of one year prior thereto. Provided that this sub-section shall not be held to apply to syringes or needles for the treatment of fowl or livestock." The term "physician" is defined to mean a person authorized to practice medicine in the State of Louisiana.

2. *Ibid.*

3. *State v. Birdsell*, 232 La. 725, 95 So.2d 290 (1957).

4. See note 16 *infra*.

fendant pleaded the unconstitutionality of the statute under the Federal Constitution. On rehearing, *held*, conviction reversed. A statute that imposes criminal liability through a creation of an irrebuttable presumption of guilt based on mere possession of an instrument used essentially for useful and necessary purposes is violative of the due process clause of the Federal Constitution. *State v. Birdsell*, 235 La. 396, 104 So.2d 148 (1953).

Generally, a criminal statute will not violate the due process clause of the Constitution unless the statute is so unreasonable, arbitrary, or capricious as to shock the conscience.⁵ Two of the more specific considerations involved in such a determination are whether the objective of the statute is necessary to the public welfare⁶ and whether the means provided by the statute are effective in achieving this end.⁷ Another specific consideration of due process is the general requirement that there must be *scienter*, or criminal intent, before action can be punished as criminal.⁸ Certain exceptions to this rule exist, and where the public interest is very great and the potentiality of serious injury is large, no criminal intent is required. Thus under pure food and drug laws the offender need not have criminal intent nor even knowledge of the commission of the prohibited act.⁹ Criminal intent is not a required element of either sex offenses against juveniles¹⁰ or of narcotics violations.¹¹ If the penalty for the crime which requires no criminal intent is greatly disproportionate to the evil to be suppressed, unconstitutionality may

5. *Rochin v. California*, 342 U.S. 165 (1952); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

6. In *Shevlin-Carpenter v. Minnesota*, 218 U.S. 57 (1910), the protection of state lands was deemed sufficiently necessary to warrant such a statute.

7. In *Lambert v. California*, 355 U.S. 225 (1957), the statute requiring felons to register with the police was considered ineffective in combatting recidivistic crimes. Rather, it seemed merely a means of harassment. See also Note, 18 LOUISIANA LAW REVIEW 726 (1958) for a discussion of this case.

8. *United States v. Balint*, 258 U.S. 250 (1922); *United States v. Brunett*, 53 F.2d 219 (W.D. Mo. 1931); *United States v. Schultze*, 28 F. Supp. 234 (W.D. Ky. 1939).

9. *Carolene Products v. United States*, 323 U.S. 18 (1944); *United States v. Balint*, 258 U.S. 250, 252 (1922); *Barnes v. United States*, 142 F.2d 648 (9th Cir. 1944).

10. LA. R.S. 14:80 (1950). The offender cannot set up as a defense, lack of knowledge of the victim's age, so upon proof of commission of the act, no criminal intent must be proven. See also *id.* 14:42(3), 14:81.

11. *United States v. Balint*, 258 U.S. 250 (1922) (defendant was convicted under a statute prohibiting sale of narcotics. Court held that no intent or knowledge was required in the statute and that it was not a violation of due process). See also *United States v. Berhman*, 258 U.S. 280, 288 (1922) ("If the offense be a statutory one, and intent or knowledge is not made an element of it, the indictment need not charge such knowledge or intent").

result.¹² It is to be observed that in sex offenses against juveniles and narcotics violations, greater punishment is generally provided for than in the area of pure food and drug laws. The statutes are nevertheless constitutional in view of the proportionality of the greater punishment to the greater evil. Also, in sex and narcotics violations the act is so inherently evil that it may be said that the offender knew or should have known that his action was against the accepted standards of conduct of society, and a severe penalty is justified. Nevertheless, because of the seriousness of the punishment imposed, the offender must do a knowing act, whereas in the pure food laws, the punishment is comparatively so slight that an unknowing act may be punished.¹³

It should be noted that the above considerations are relative and not absolute factors in determining whether a statute satisfies due process requirements.¹⁴

By its inclusion in the Narcotics Act,¹⁵ the objective of the statute in the instant case is apparently to control the use of narcotics. Such an end would seem quite necessary to protect the public welfare. Also the punishment of persons who merely possess syringes would seem to be an effective means of apprehending narcotics addicts in view of the fact that syringes are commonly used to administer drugs. However, since many necessary and useful purposes are served by syringes, the court seemed to feel that the statute was so unreasonable as to outweigh any necessity of protecting the public from narcotics users. Another factor which apparently influenced the court was the fact that a person merely possessing an innocuous object could be subjected to a severe punishment even though that

12. PERKINS, CRIMINAL LAW, ch. 7, § 5 (1957), for a discussion of proportionality of punishment.

13. See note 9 *supra*.

14. Compare, e.g., *Shevlin-Carpenter Co. v. Minnesota*, 218 U.S. 57 (1910) and *Lambert v. California*, 355 U.S. 225 (1957). In the *Minnesota* case a statute which did not require criminal intent was upheld, whereas in the *California* case the absence of a criminal intent element caused the statute to be unconstitutional. The California ordinance punished felons for a mere failure to register, whereas the Minnesota statute punished the taking of state timber, even though the taking occurred under a good faith belief that a valid permit had been granted. The Supreme Court in the *Minnesota* case was impressed with the necessity and effectiveness of the statute in preventing the theft of state timber. However, in the *California* case, since public records contained lists of local ex-convicts, the Court was neither impressed with the effectiveness of the statute in protecting the public from criminal recidivism nor the necessity of requiring local felons to register.

15. LA. R.S. 40:962 (1950) is similar to the Uniform Narcotics Act, and contains provisions prohibiting possession of hypodermic needles and syringes.

person had no criminal intent. Apparently, if the statute had required criminal intent as an element of the crime, the court would have found it constitutional. Where the intent element is necessary to the constitutionality of a statute, and the statute on its face does not require intent, the court is faced with alternatives. The statute may be declared unconstitutional, or it may be interpreted as requiring the requisite intent. On appeal of the original trial, the court seemed to read in an intent element.¹⁶ However, on appeal of the second trial the court applied the statute as written and declared it unconstitutional.¹⁷ It might appear that in the case of *State v. Johnson*,¹⁸ involving a conviction for possession of narcotics, the court read in an intent requirement. It is submitted that the court there read in a requirement that the offender *knowingly* possess the narcotics.¹⁹

16. The holding of the court on the appeal of the first trial of *State v. Birdsell*, 232 La. 725, 95 So.2d 290 (1957) and the holding of the instant decision appear at first glance to be in conflict. In the first trial, the defendant had offered evidence tending to prove the absence of an intent to use the syringe for criminal purposes. The state's objection to the relevancy and admissibility of such evidence was sustained, although objections by the defense to evidence introduced by the prosecution to show the presence of a criminal intent were overruled. Considering only the bill of exceptions which was taken to the sustaining of the state's objection, the Supreme Court stated that evidence relating to intent was relevant and admissible whether introduced by the defendant or the prosecution. The rationale was that in order to be constitutional a criminal statute must contain a criminal intent element as a part of the proscribed conduct. In view of this, it was reasonable to conclude that the court had read the requisite intent element into the statute. See Note, 18 LOUISIANA LAW REVIEW 340 (1958). However, it is submitted that such a conclusion is incorrect and that therefore the earlier decision and the instant decision are compatible. The validity of the statute had not been put in question in the first decision. The court was merely considering an evidentiary question and it would have been grossly unfair to preclude the defendant from introducing evidence to rebut the evidence as to criminal intent which the state had been allowed to introduce. Apparently the court, although it did not expressly state that it was so doing, presumed that the statute was valid in the absence of any attack upon its constitutionality. See *Barber v. Louisiana Ry. & Nav. Co.*, 141 La. 1059, 76 So. 199 (1917). Therefore, the court must have reasoned that any evidence relating to criminal intent was relevant because, under the presumption of constitutionality, the statute would contain all constitutional requirements. However, in the instant opinion, the court was squarely faced with an attack upon the constitutionality of the statute and had to consider not what the statute presumably contained, but whether it actually contained the requisites for validity.

17. See note 16 *supra*.

18. 228 La. 317, 82 So.2d 24 (1955). On trial for unlawful possession of narcotics, evidence of a subsequent offense was admitted over defendant's objection to prove guilty knowledge. Defendant appealed on the grounds that guilty knowledge or intent was not a required element of the offense and that admission of the evidence was reversible error. Court held that evidence tending to prove that the defendant did "knowingly possess" was relevant because such possession was necessary to support a conviction.

19. See note 18 *supra*. This case was predicated largely on rules of evidence. However, it will be noted that after going into an extensive discussion of intent requirements, the court adopted the term *knowledge* rather than intent. It was held that guilty knowledge was necessary in order for there to be *unlawful* possession. There has been much disagreement about what kind of knowledge the

There is a great probability when narcotics are in the possession of a layman that they will be used for criminal purposes. Therefore, knowing possession of narcotics is sufficient to impute the requisite criminal intent element.²⁰ Actual criminal intent is not a required element for the constitutionality of any criminal statute which proscribes conduct which an offender should reasonably anticipate as having criminal consequences.²¹ A criminal intent may be imputed to such conduct. However, a criminal intent cannot be imputed from the knowing possession of a hypodermic syringe because of the object's many ordinary and innocent uses.

The difficulty in securing narcotics convictions under statutes requiring that the offender be found with drugs in his possession is quite evident since normally narcotics are held in small portions which are easily disposed of. Therefore, statutes such as the one in the instant case offer a valuable means whereby narcotics violators can be convicted. The problem is to avoid punishing innocent persons who possess hypodermic syringes for legal purposes, and with no intention to use for narcotic purposes. It is submitted that the conflicting considerations of ease in prosecution and protection of the innocent can be compromised by re-enacting this statute so as to create a rebuttable presumption of criminal intent based on mere possession. This approach has been employed in narcotics legislation, as well as legislation against the possession of burglars' tools,²² articles

court required in this case, whether it required knowledge of possession of the article alone, or knowledge of the fact of possession of the article as well as of its narcotic content. It seems that the latter is the correct view, for mere knowledge that one is possessing an article with no knowledge of the narcotic content would not seem to create *guilty* knowledge as the court required. Such knowledge would not, by the analysis here presented, result in constitutionality. Also, from the emphasis that the court placed on the term "unlawful possession," it seems that such possession would be found only in the absence of any lawful use, such as use under the direction of a physician. See Note, 17 LOUISIANA LAW REVIEW 229 (1956).

20. "In the recent case of *State v. Johnson*, 228 La. 317, 82 So.2d 24, we held that unlawful possession, where one is invested with some right of dominion, can be defined as a possession *which in the ordinary course of human experience necessarily involves knowledge of the fact that one is possessing either rightfully or unlawfully as well as with knowledge of the criminal consequences which one should reasonably anticipate therefrom.*" (Emphasis added.) *State v. Birdsell*, 232 La. 725, 729, 95 So.2d 290, 291 (1957).

21. See note 20 *supra*.

22. *State v. Smith*, 247 Iowa 500, 73 N.W.2d 189 (1955) (here it was held that the finding of burglary tools in the defendant's car constituted a *prima facie* case against the defendant); *Benton v. United States*, 232 F.2d 341 (D.C. Cir. 1956) (it was held that a presumption of guilt from the fact of possession, if the possession was not explained satisfactorily, was permissible); *Yce Hem v. United States*, 268 U.S. 178 (1925) (court held that a statute making possession of nar-

equally as innocent in nature as are hypodermic syringes, and it eases the burden of prosecution by placing the burden of proving innocent intention on the possessor.

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CRIMINAL LAW — INTOXICATION AND SPECIFIC INTENT
IN HOMICIDE PROSECUTION

In a prosecution for murder¹ there was evidence that the defendants had been drinking intoxicants shortly before the shooting. The trial judge charged the jury that voluntary intoxication could never be a defense to a crime² and refused to instruct the jury that they could consider the voluntary intoxication of those defendants who had not actually fired the gun insofar as intoxication might bear on whether or not they are principals.³ On appeal of the conviction, *held*, reversed. Although the charge requested by the defendants was improper, the charge given by the judge was incomplete and constituted reversible error, for it denied the defendants "the right to have the jury pass on the factual question of whether they were in such an intoxicated condition as to preclude the presence of a specific criminal intent."⁴ *State v. Youngblood*, 106 So.2d 689 (La. 1958).

The Louisiana Criminal Code provides that criminal intent may be either general or specific and defines specific criminal intent as "that state of mind which exists when the circumstances indicate that the offender actively desired the proscribed criminal consequences to follow his act or failure to act."⁵ The

coties sufficient to support a presumption of knowledge, unless defendant could explain or rebut such presumption, was constitutional).

1. LA. R.S. 14:30(1) (1950): "Murder is the killing of a human being, (1) When the offender has a specific intent to kill or to inflict great bodily harm." Felony murder defined in clause (2) of this article is not applicable to this situation.

2. *State v. Youngblood*, 106 So.2d 689, 690 (La. 1958): "I charge you further that voluntary intoxication is no defense under the law for having committed a crime while so intoxicated."

3. *Ibid.* Trial judge refused the following charge requested by defendants: "However, a partial or total intoxication may be considered by you in weighing the behavior and conduct of the defendants as you may find were not guilty of actually triggering the weapon that killed [the deceased], insofar as such behavior or conduct may bear on whether or not they were aiders, abettors, counsellors, or procurers."

4. *Id.* at 691.

5. LA. R.S. 14:10(1) (1950). Clause (2) of this article defines general intent as being present "whenever there is specific intent, and also when the circumstances indicate that the offender, in the ordinary course of human experience,